his right to pursue prosecution of the cancelled claims through a later filed continuation application.

Newly added claims 26-28 are fully supported by the specification and do not constitute new matter. Support for claims 26, 27 and 28 are found throughout the specification and specifically, claims 26 and 27 add further limitations that correspond to those presented in cancelled claims 3 and 4, respectively. Similarly, new claim 28 corresponds to cancelled claim 5.

The rejection of claims 23 and 24 under 35 U.S.C. 112 is moot due to the amendments made herein.

102(e) Rejection over Brown et al.

The rejection of claims 2-10 and 12-25 under 35 USC 102(e) over Brown et al (US Pat No. 6,071,305) should be withdrawn based on the following. The Applicant wishes to point out that the basis for the rejection of claim 16 was never cited in the present Office Action. The Applicant bases his arguments, below, on assuming that claim 16 was rejected for reasons similar to that for claims 5 and 8. The pending claims (16, 20, and 26-28) after amendment are all directed towards an endoluminal stent having structural elements comprising a void space between a first and second layers. Brown et al. fails to disclose such a device and therefore fails to anticipate these pending claims.

Brown et al. fails to disclose the claimed invention because Brown et al., while disclosing a device manufactured by cutting and modifying an elongated tubular member (see column 12), fails to recite a structural element with two layers. Specifically, Brown et al. discusses modification of a cylindrical tube (col. 12, ln 10-13) and forming grooves, specifically by using a laser (col. 12, ln 22-25). Nothing in Brown et al. mentions a structural element having a wall thickness that is comprised of **a first and a second layer**, the two layers defining a void space. The absence of this element prevents Brown et al. from anticipating the claimed invention.

Accordingly, Brown et al. fails to anticipate the claimed invention and, therefore, the rejections under section 102 should be withdrawn.

102(b) Rejection over Yan

The rejection of claims 2-10 and 12-25 under 35 USC 102(b) over Yan (US Pat No. 5,843,172) should be withdrawn based on the following. The pending claims (16, 20, and 26-28) after amendment are all directed towards an endoluminal stent having structural elements comprising a void space between a first and second layer. Yan fails to disclose a device that includes such structural elements and, therefore, fails to anticipate the pending claims.

Yan, while disclosing a stent formed from a porous metal including porous cavities throughout, fails to disclose a structural element having a first and second layer and a void space intermediate the two layers. Yan explains that the stent is formed of porous metal that is formed by a process of packing particles together into a shape and applying heat to bond the particles. Col. 4, ln 1-11. This packing process does not include a method for forming a first and second layer with a void space in between. Furthermore, the disclosure in Yan suggests that a void space between layers is not possible since the particles have to be pressed together or molded into a desired shape. The only void space disclosed in Yan are gaps, or the pores, that remain in between the pressed particles and extend throughout the entire material. Col. 4, lines 22-26. Yan teaches forming different size pores by controlling the size of the particles, where the larger the particles, the larger the pores become once the particles are pressed together. This fails to disclose the claimed element of a void space in between a first and second layer.

Accordingly, Yan fails to anticipate the claimed invention and, therefore, the rejections under section 102 should be withdrawn.

SUMMARY

According to the amendments and arguments presented above, the Applicant respectfully submits that the cited references fail to anticipate pending claims 16, 20, and 26-28, and, therefore, the pending claims are in an allowable form and their allowance is respectfully requested.

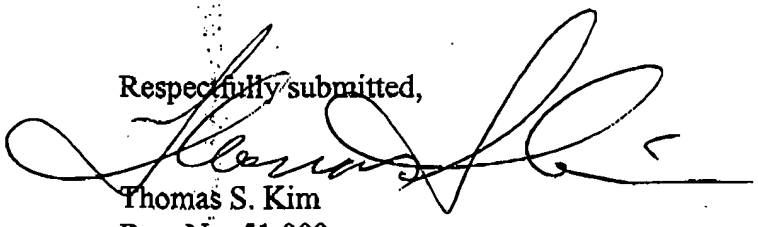
In addition, the Applicant submits that the cited references, alone or in combination, fail to render the present claims obvious. Neither Brown et al. nor Yan suggest a method for forming

structural elements that allows for the formation of a void space between such layers. Brown et al. is limited to post-fabrication methods of modifying a tubular member, while Yan is limited to compressed scintered metal or particles. None of these methods suggests the claimed device or a method for forming such device. Accordingly, the cited references fail to render the pending claims obvious.

The Applicant respectfully points out to the Patent Office that the information disclosure statement filed on December 12, 2002 was complete and did comply with 37 CFR 1.98(a)(2). As evidence, the Applicant has attached a copy of the return postcard as an exhibit (Exhibit A), which shows that 77 references were filed along with the IDS. In addition, the Applicant submits that one of Applicant's attorneys, David G. Rosenbaum (Reg. No. 31,872), did have a telephonic interview with Examiner Cheryl Miller in which co-pending applications Ser. No. 09/707,685 and 09/716,146 were discussed (having similar assignee). In a similar fashion as in the current case, Examiner Miller believed some references cited in each respective, filed IDS were missing. After discussing with Mr. Rosenbaum, Examiner Miller realized that the references were segregated into different groups. Accordingly, the Applicant believes that the same situation has occurred in the present case and that somehow the foreign patent documents and the other art copies must have been separated.

This Response is timely filed. Should the Examiner require any further information or wish to discuss any aspect of this Response, the Examiner is encouraged to telephone the undersigned at the telephone number set forth below.

Respectfully submitted,



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MARKED UP VERSION OF CLAIMS SHOWING AMENDMENTS

In the claims:

Please cancel claims 2-10, 12-15, 17-19, and 21-25.

Please add claims 26-28 as shown below.

26. (New) The endoluminal stent according to claim 16, wherein the structural elements further comprises a material selected from the group consisting of titanium, vanadium, aluminum, nickel, tantalum, zirconium, chromium, silver, gold, silicon, magnesium, niobium, scandium, platinum, cobalt, palladium, manganese, molybdenum and alloys thereof, including zirconium-titanium-tantalum alloys, nitinol, and stainless steel.

27. (New) The endoluminal stent according to claim 16, wherein the bioactive agent further comprises a pharmacologically active agent selected from the group consisting of antibiotic drugs, antiviral drugs, neoplastic agents, steroids, fibronectin, anti-clotting drugs, anti-platelet function drugs, drugs which prevent smooth muscle cell growth on inner surface wall of vessel, heparin, heparin fragments, aspirin, coumadin, tissue plasminogen activator, urokinase, hirudin, streptokinase, antiproliferatives, methotrexate, cisplatin, fluorouracil, adriamycin, antioxidants, ascorbic acid, beta carotene, vitamin E, antimetabolites, thromboxane inhibitors, non-steroidal and steroidal anti-inflammatory drugs, immunosuppresents, such as rapomycin, beta and calcium channel blockers, genetic materials including DNA and RNA fragments, complete expression genes, antibodies, lymphokines, growth factors, vascular endothelial growth factor and fibroblast growth factor, prostaglandins, leukotrienes, laminin, elastin, collagen, nitric oxide, and integrins.

28. (New) The endoluminal stent according to claim 16, wherein the void space comprises a plurality of independent internal cavities along the length of the structural elements.